

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

JUSTIN SEAN JOHNSON

Criminal No. 20-94

**GOVERNMENT’S MOTION FOR UPWARD DEPARTURE/VARIANCE PURSUANT  
TO USSG SECTION 5K2.0 and 18 U.S.C. Sec. 3553(b)(1)**

AND NOW comes the United States of America, by its attorneys, Stephen R. Kaufman, Acting United States Attorney for the Western District of Pennsylvania, and Gregory C. Melucci, Assistant United States Attorney for said district, and respectfully files this motion for an Upward Departure/Variance Pursuant to USSG Section 5K2.0 based on the following:

- 1) The PSR in the above case calculates a USSG sentence for Count One of 46-57 months incarceration after a 3-level adjustment of acceptance of responsibility. See PSR para. 91.
- 2) Additionally, the Court must impose a sentence of 24 months incarceration at Count 39, which, by statute, must be served consecutively to the sentence at Count One.
- 3) The United States’ Sentencing Memorandum asks the Court to impose a sentence as to Count One which exceeds 57 months.
- 4) For the reasons set forth in the Offense Conduct section of the PSR, and the United States’ Sentencing Memorandum (incorporated herein), the United States seeks an upward departure or variance from the Guideline Range under Count One, specifically, circumstances not adequately taken into consideration by the guidelines, eg, the number of victims of the ID theft under 2B1.1(b)(2). Additionally, under USSG 5K2.21 and 18 U.S.C. Sec. 3553(b)(1), the Court may depart or vary upward based upon the actual seriousness of the offense due to uncharged conduct connected to the Defendant’s hack of other institutions, as well as the potential higher

statutory maximum sentence for dismissed charges, eg, wire fraud and aggravated ID theft which were not sought as part of the plea agreement.

WHEREFORE, the United States respectfully requests that this Honorable Court grant this motion.

Respectfully submitted,

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